

REMARKS

Petitioners respectfully request that the Office Action dated August 21, 2003 be withdrawn. Petitioners submit that the Examiner abused his discretion in reopening prosecution in the above identified application when no new issue was presented in the Office Action to warrant pulling the above identified application from appeal.

On November 27, 2002, Petitioners filed a Notice of Appeal to appeal the Office Action dated August 27, 2002 finally rejecting claims 1-4 and 11. Petitioners filed an Appeal Brief on January 16, 2003 arguing that the Examiner failed to make a *prima facie* case of obviousness. The Examiner reopened prosecution of the application by issuing an Office Action on March 18, 2003 allegedly stating a new ground of rejection. In the Office Action of March 18, 2003, the Examiner merely supplied a reference to support a proposition previously stated in the Final Office Action being appealed. The Examiner cited Kingery et al. to support the Examiner's previously stated position. Subsequently on May 27, 2003, Petitioners filed a Request for Reinstatement of Appeal with a Supplemental Appeal Brief to address the alleged new ground of rejection regarding the Examiner's reliance on Kingery et al.

Again, on August 21, 2003, the Examiner has reopened prosecution by issuing an Office Action. It is this Office Action that Petitioners request withdrawal of. Petitioners submit that no new ground of rejection was set forth in the Office Action dated August 21, 2003. In fact, the first Office Action reopening prosecution dated March 18, 2003 and the present Office Action dated August 21, 2003 are substantially identical. No new reference is relied on in the present Office Action. The entire text of paragraphs 2 and 3 addressing the obviousness rejection in the present Office Action are identical to paragraphs 1 and 2 addressing the same obviousness rejection in the Office Action dated March 18, 2003.

The only exception is a one sentence paragraph on page 4, which states "Kingery et al. discloses the basic and expected nature of the stages of crystal growth including nucleation and growth (see page 328 and 336)." In addition to the above, the text in the second full paragraph on page 4 is not verbatim identical, but is a paraphrase of the third full paragraph on page 3 of the Office Action dated March 18, 2003.

Clearly, no new issue was presented in the present Office Action now being petitioned. The Examiner abused his discretion in reopening prosecution with the issuance of an Office Action

that failed to raise a new rejection. Such abuse, not only frustrates an applicant for a patent but also reflects poorly on the Patent Office. The Examiner has an avenue to express disagreement with an Appellant's position proffered in an Appeal Brief. An Examiner may file an Examiner's Answer in response to arguments in an Appeal Brief. The Examiner, in this case, abused his discretion and was thereby allowed several attempts to bolster his position by reopening prosecution with issuing Office Actions at the Appellant/Petitioner's expense.

For the foregoing reasons, Petitioners respectfully request that the Office Action dated August 21, 2003 be withdrawn as inappropriately issued, where the Examiner abused his discretion in reopening prosecution without raising new grounds of rejections.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Kecia J. Reynolds (Reg. No.47,021) at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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Attachment(s)

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